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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,749	01/14/2002	Michael Vajdy	16464.003	5494

7590 10/15/2010
CHIRON CORPORATION
Intellectual Property - R440
P.O. Box 8097
Emeryville, CA 94662-8097

EXAMINER

SNYDER, STUART

ART UNIT	PAPER NUMBER
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1648

MAIL DATE	DELIVERY MODE
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10/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/051,749

Applicant(s)

VAJDY ET AL.

Examiner

STUART W. SNYDER

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5-10, 13-15, 19-30 and 35-42 is/are pending in the application.
4a) Of the above claim(s) 6, 7, 22-28 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5, 8-10, 13-15, 19-21, 29, 30, 35-39, 41 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/24/2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/24/2009 has been entered.

Status of the Claims

2. Claims 1, 5-10, 13-15, 19-30, 35-42 are pending; claims 6-7, 22-28 and 40 are withdrawn as being drawn to non-elected embodiments of the invention. Amendment of claims 1, 13-15, and 29; and cancellation of claims 2-4, 10-12, and 16-17 is acknowledged.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 11/24/2009 was filed after the mailing date of the Office Action on 9/1/2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1648

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5, 8-10, 13-15, 19-21, 29, 30, 35-39, 41 and 42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Malone, et al. in view of Barchfield, et al. and Rappuoli. The claims are drawn to a method of generating an immune response in a subject comprising intranasal administration of a composition comprising a detoxified bacterial ADP-ribosylating toxin and a replication-defective alphavirus vector comprising a polynucleotide encoding at least one antigen.

Applicant has amended claim 1 to recite the following relevant limitations: 1) intranasal administration and 2) dendritic cell-tropic replication-defective alphavirus vectors and alleges that the cited references do not teach such limitations. However, Malone, et al teaches replication-deficient vectors, "the recombinant gene expression vectors are not capable of replication" (see abstract) and alphavirus vectors (see claims and throughout) administered intranasally (see Brief Descriptions of Drawings and throughout the Examples). Furthermore, such vectors are intended to be of use in dendritic cells, "including dendritic cells associated with mucosa". Thus, Applicants' allegations concerning the limitations not being taught by the combined citations are not valid and the rejection is **maintained**.

5. Claims 1 and 41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Malone, Barchfield, Rappuoli and McCluskie. Applicant alleges that the McCluskie, et al. does not cure the supposed deficiencies of Malone, Barchfield

and Rappuoli described above and related to the alphavirus vectors. As shown above all the supposed deficiencies are taught by Malone. Thus, the rejection is **maintained**.

Conclusion

6. No claims are allowed.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STUART W. SNYDER whose telephone number is (571)272-9945. The examiner can normally be reached on 9:00 AM-5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ZACHARIAH LUCAS can be reached on (571)272-0905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary E Mosher/
Primary Examiner, Art Unit 1648

Stuart W Snyder
Examiner
Art Unit 1648

SWS